IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/10/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.23774 of 2001

Abdul Sattar, H.A.L.,
No.6 Binny Nagar Colony Street
Madhavaram Milk Conlony Post
Chennai 600 051 ..... Petitioner

-Vs-

Union Bank of India
rep. by its Chief Manager (p)
239 Vidhan Bhavan Marg
Mumbai 400 021 ..... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, as stated therein.

For Petitioner : Mr.Balan Haridass

For Respondent : Mr.D.Krishnan

:ORDER

This writ petition has been filed for the issuance of a writ of certiorarified mandamus, to call for the records relating to the order or the respondent dated 15.03.2001 bearing Ref. No. DP:PENSION:182:01 and to quash the same and consequently direct the respondent to sanction pension in terms of Union Bank of India (Employees) Pension Regulations, 1995 with effect from the date of coming into force of the Pension Regulation with interest at the rate of 24% per annum.

2. The brief facts that are necessary for the disposal of this writ petition are as follows:
The petitioner was appointed on 01.07.1958 in the Union Bank of India as a Clerk. Thereafter, he was promoted as Officer. On 31.10.1989, the petitioner was relieved from service on voluntary retirement on medical grounds. On his date of retirement, there was no pension scheme. However, in the year 1993, the pension scheme was introduced. The scheme itself provided for grant of pension even to those persons who retired from services from 01.01.1986 to 31.10.1993. The petitioner approached the Bank for grant of

pension, but the Bank denied the petitioner's request on the ground that the scheme was applicable only to persons who retired on superannuation and not to persons who retired voluntarily.

3. Similar orders have been passed by many Banks and this culminated in the unreported Judgment of the Supreme Court in the case of Bank of India Vs. Rajagoplan and others in Civil Appeal No.6959 of 1999, where the Supreme Court has held:-
"All that has happened is in such of the banks where a scheme for voluntary retirement was available, certain employees retired under that scheme. Now a comprehensive pension scheme has been framed which came into force w.e.f.01.11.1993 and applicable uniformly to all Bank employees which provides for voluntary retirement as well. The applicability of these Rules to those employees who have voluntarily retired w.e.f. 01.01.1986 to 31.10.1993 is raised in these matters. It is not possible for Shri V.R.Reddy, learned senior counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court has given appropriate directions. We also notice that the number of employees who have retired in this manner is also very small. However, we think no interference is called for in these appeals. The appeals are therefore, dismissed with no order as to costs."

4. Following the above decision, the bank forwarded an application seeking the petitioner to exercise his option as to whether he wants to continue in the Provident Fund scheme or switch over to the Pension Scheme. On 01.08.2000, the petitioner submitted the application to the authorities seeking permission. But by order dated 15.03.2001, the claim of the petitioner was rejected. That order that is now challenged.
The impugned order read as follows:
"However, as already conveyed to you vide our letter No. DP:PENSION:1743:2000 dated 07.07.2000, "Pensionary benefits arising out of the judgment are to be granted only to those officer employees who had voluntarily retired during the period 01.01.1986 to 31.10.1993 in terms of specific scheme formulated by the Bank's Board pursuant to the proviso to Regulation 19 of the Officers' Service Regulations. These officers are to be sanctioned the benefits in terms of Regulation 29 of Bank (Employees) Pension Scheme, 1995."
The request for voluntary retirement on medical grounds in terms of Staff Circular No.3292 dated 13.06.1988 which pertains to voluntary retirement on medical grounds and appointment of dependant on compassionate grounds does not fall within the purview of Regulation 29 of Union Bank of India (Employees) Pension Regulations, 1995."

5. The only ground on which the petitioner claim was rejected was that the Supreme Court decision is applicable only to those who retired voluntarily under specific scheme formulated by the Bank's Board. But, the petitioner went on voluntary retirement only on medical ground and not under the specific scheme formulated and therefore the decision of the Supreme Court is not applicable to the petitioner who went on retirement voluntarily on

medical grounds. Therefore, on that ground, it was denied.

6. The learned counsel for the petitioner Mr.Balan Haridas submitted that when the Supreme Court has not made such a distinction, the authorities ought not to have made a distinction and refuse to apply the regulations framed. According to the learned counsel the decision of the Supreme Court squarely applies to the facts of the present case. Therefore, the discrimination and distinction sought to be made by the Bank between the persons who went on reiterement voluntarily on medical grounds and those who went on voluntary retirment under specific scheme framed by the Bank's Board cannot be countenanced. Therefore, the impugned order is liable to be set aside.

7. The learned counsel Mr.D.Krishnan appearing for the respondents submitted that under regulation 30 of the Pension Regulations, Invalid Pension is given to person who went out of service due to health reasons. To such persons Regulation 29, dealing with pension for persons going on voluntary retirement is not applicable. Therefore, the petitioner who went on retirement under Regulation 30, cannot claim pension. According to the learned counsel, the Judgment of the Supreme Court applies only to persons who fall under Regulation 29 and therefore, this Judgment of the Supreme Court is not applicable to the person who fall under Regulation 30 of the Pension Regulations. Therefore, the impugned order is valid and cannot be set aside.

8. Under Regulation 28, Superannuation pension is provided to an employee who has retired on his attaining the age of superannuation specified in the service Regulations or Settlements. Under the Union of India Employee's pension Regulation, 1995, pension on voluntary retirement is provided under Regulation 29 for those persons who retired voluntarily on or after 1st November, 1993 and who has completed 20 years of qualifying service giving notice of three months in writing subject to the proviso incorporated therein. Under Regulation 30, invalid pension is provided to employees who have rendered a service of 1 0 years and retired on or after 1st November, 1993 on account of any bodily or mentally infirmity which permanently incapacitates him for the service. The petitioner has opted to go on voluntary retirement after 30 years of service; his going out of service was not due to any "bodily or mental infirmity which permanently incapacitates him for service". Therefore, Regulation 30 has no application to the petitioner; he should be paid under Regulation 29 and not under Regulation 30.

9. A beneficial provision granted under Regulation 29 cannot be taken exception to deny pension on the ground that the petitioner had retired on health grounds. In this case, as per Regulation 29, the petitioner who went on voluntary retirement after having served in the respondent bank for 30 years is eligible for pension as decided by the Honourable Supreme Court cited supra.

10. When that be the case, the respondent is not justified in making a distinction between those persons who went on voluntary retirement on health grounds and those persons who went on voluntary retirement under a specific scheme framed by the Board of that bank. This discrimination sought to be enforced by the respondent Bank violates the principles enunciated under

Article 14 of the Constitution of India. There is no nexus that is sought to be made in such classification and therefore it has to be held invalid as directly opposed the principle of equality guaranteed by the Constitution. Therefore, the impugned order is liable to be quashed. Hence, the writ petition is allowed and the order of the respondent bank is quashed.

11. Considering the fact that the writ petition is pending for more than 10 years, the respondent is directed to pass orders within a period of one month from the date of receipt of a copy of this order.

12. In the result, the writ petition is allowed as prayed for. No costs.

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Internet:Yes

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